

IN THE UNITED DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

TOMMIE TUCKER and Wife CANDACE TUCKER

PLAINTIFFS

v.

Civil Cause No. _____

BAPTIST MEMORIAL HEALTHCARE CORPORATION,
d/b/a BAPTIST HOSPITAL-MEMPHIS and
CARDIOVASCULAR SURGERY CLINIC, PLLC.

DEFENDANTS

JURY TRIAL DEMANDED

COMPLAINT

COME NOW the Plaintiffs, Tommie Tucker and wife, Candace Tucker, by and through their attorneys, Merkel & Cocke, P.A., and in support hereof would show unto the Court as follows:

Parties

1. The Plaintiffs are adult resident citizens of Oxford, Mississippi.
2. The Defendant Baptist Memorial Healthcare Corporation, upon information and belief, is an Tennessee Corporation with is principal place of business at 350 N. Humphreys Blvd., Memphis, Tennessee 38120. This Defendant may be served with process by services upon its registered agent, Gregory M. Duckett at 350 N. Humphreys Blvd., Memphis, Tennessee. This Defendant does business at Baptist Memorial Hospital-Memphis (BMH).
3. The Defendant Cardiovascular Surgery Clinic, PLLC, upon information and belief, is a Tennessee professional limited liability company with its principal place of business located at 6029 Walnut Grove Rd., Suite 401, Memphis, Tennessee 38120 (CSC). This Defendant may be served with process upon its registered agent, H. Edward Garrett, M.D., 6029 Walnut Grove Rd., Suite 401, Memphis, Tennessee 38120.

Jurisdiction and Venue

4. There is a complete diversity of citizenship between all Plaintiffs and all Defendants and

the amount in controversy exceeds the amount of \$75,000, exclusive of interest and costs. Venue is proper in the Western District, Western Division in that the alleged acts or omissions occurred in Memphis, Shelby County, Tennessee, and both named Defendants may be found in Shelby County.

Factual Allegations

5. On or about December 3, 2009, Tommie Tucker underwent heart surgery performed by Russell Carter, M.D. at Baptist Memorial Hospital - Memphis. At all relevant times, Dr. Carter was an employee and agent of Defendant Cardiovascular Surgery Clinic, PLLC.

6. Unknown to Plaintiff, during the procedure a foreign object (red rubber tubing) was left in Plaintiff's chest. A photographic image of the tubing is attached.

7. On or about July 2010, Plaintiff began experiencing severe chest pain. Plaintiff eventually had a chest x-ray ordered by Charles Hill, M.D. The chest x-ray revealed the likely presence of the foreign object. Prior to the chest x-ray the Plaintiff did not know and could not have known of the Defendants' negligence in leaving the foreign object in Plaintiff's chest.

8. On or about August 7, 2010, Plaintiff Tommie Tucker underwent a second operative procedure performed by Dr. Brad Wolf, an employee of Cardiovascular Surgery Clinic, PLLC, to remove the foreign object. This procedure was also performed at Baptist Memorial Hospital - Memphis.

9. Plaintiffs allege that Russell Carter, M.D. and nursing employees of Baptist Memorial Hospital - Memphis were negligent in leaving the foreign object in Plaintiff's chest.

10. As a direct and proximate result of the Defendants negligence the Plaintiff Tommie Tucker suffered pain and suffering, mental and emotional anguish, additional surgery, medical expense, loss of earnings, additional scarring and such other and further damages as may be proved here.

11. At all relevant times Russell Carter, M.D. was an employee of Cardiovascular Surgery Clinic, PLLC, acting during and within the scope of his employment. This Defendant is vicariously liable for the acts of its employer/agent, Russell Carter, M.D.

12. At all relevant times the surgical nurses for the initial procedure performed by Dr. Carter were employees, agents or apparent agents of BMH acting during and within the scope of their employment. The Defendant BMH is vicariously liable for the acts of its employees/agents/apparent agents.

13. At all relevant times the Plaintiff Candace Tucker was and is the wife of Plaintiff Tommie Tucker. As a direct and proximate result of the Defendants' negligence, Plaintiff Candace Tucker has suffered a loss of consortium with her husband and has suffered such other damages as may be proved herein.

14. Plaintiffs have given proper written notice to the Defendants more than 60 days prior to the filing of this action, pursuant to the provisions of Tenn. Code Ann. §29-26-121. The Affidavit of William B. Raiford, III, counsel for the Plaintiffs, is attached hereto. Said Affidavit sets forth the basis upon which notice was served upon the Defendants.

WHEREFORE PREMISES CONSIDERED, Plaintiffs Tommie Tucker and Candace Tucker demand judgment of and from the Defendants in an amount determined by the trier of fact to fairly compensate plaintiffs for their losses. Plaintiffs respectfully submit the jury should apportion fault to each Defendant based upon their respective percentages of fault as determined by the trier of fact.

Respectfully submitted,

MERKEL & COCKE, P.A.

/s/ William B. Raiford, III
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ATTORNEY'S CERTIFICATE

Pursuant to provisions of Tennessee Code Annotated §29-26-122, I, the undersigned counsel for Tommie Tucker and Candace Tucker, hereby state that I have reviewed the facts of the case set forth in the attached Complaint, and that I have consulted with one or more experts who have provided a signed written statement confirming that upon information and belief that they are (a) competent under §29-26-115 to express opinions in this case and (b) believe, based on the information available from medical records concerning the care and treatment of the Plaintiff for the incident at issue, that there is a good faith basis to maintain the action consistent with the requirements of Tenn. Code Ann. §29-26-115.

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